

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.5217 of 2017

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C. to quash the proceedings against the petitioners-accused Nos.2 to 8 and 10 in C.C.No.384 of 2009 on the file of the Additional Judicial Magistrate of First Class, Amalapuram, East Godavari District.

2. The learned counsel for the petitioners submitted that the learned Magistrate ought to have followed the procedure contemplated under Section 195 of Cr.P.C., while taking cognizance of offence under Section 188 of I.P.C. He further submitted that the allegations made in the charge sheet do not constitute the offence alleged. He also submitted that this court by order dated 29.10.2014 allowed CrI.P.No.8674 of 2010 and quashed the proceedings against accused No.1 for the offence under Section 188 of IPC; therefore, the proceedings against petitioners-accused Nos.2 to 8 and 10 are liable to be quashed. Heard the learned Public Prosecutor representing the State.

3. A perusal of the record reveals that the petitioners are facing trial in C.C.No.384 of 2009 on the file of the Judicial Magistrate of First Class, Amalapuram, East Godavari District, for the offence under Section 188 of I.P.C. A perusal of the record reveals that the proceedings against accused No.1 were quashed by this court in CrI.P. No.8674 of 2010 on 29.10.2014 for the offence punishable under Section 188 of IPC, with the following observations:

9. Section 2 (d) Cr.P.C. defines 'complaint'. A fascicular reading of Section 2 (d) and Section 195 (1) (a) Cr.P.C and Section 188 IPC demonstrate that the concerned public servant has to file a complaint in writing before the Magistrate, having territorial jurisdiction. Even a slightest deviation from the procedure said supra, would not be curable. There is no mention in the charge sheet that the de-facto complainant is authorised by the Election

Commission to lodge the complaint. Even assuming, but not conceding, that the de-facto complainant is empowered to lodge the complaint, he has to follow the procedure contemplated under Section 195(1)(a) Cr.P.C. The material placed before the Court clinchingly establishes that the de-facto complainant has not followed the procedure. Any investigation conducted in violation of the provisions of Cr.P.C. is non-est in the eye of law. The Court ought not to have taken cognizance of offence basing on the police report, which is non-est in the eye of law. The police have no right whatsoever to investigate into the matter and file report in so far as the offence under Section 188 IPC is concerned. The learned Magistrate has not considered the scope of Section 195(1)(a) Cr.P.C while taking cognizance of offence under Section 195 IPC.

4. Admittedly, the petitioners-accused Nos.2 to 8 and 10 are facing trial in C.C. No.384 of 2009 on the file of the court of Additional Judicial First Class Magistrate, Amalapuram, East Godavari District, for the offence punishable under Section 188 of IPC. The proceedings against accused No.1 in C.C. No.384 of 2009 were quashed for the offence under Section 188 of IPC on the ground that the complainant has not followed the procedure and the learned Magistrate has not considered the scope of Section 195(1)(a) of Cr.P.C.

5. Having regard to the facts and circumstances of the case, I am of the considered view that the proceedings against the petitioners-accused Nos.2 to 8 and 10 are liable to be quashed.

6. Accordingly, the criminal petition is allowed, quashing the proceedings against the petitioners-accused Nos.2 to 8 and 10 in C.C.No.384 of 2009 on the file of the Additional Judicial Magistrate of First Class, Amalapuram, East Godavari District. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

T. SUNIL CHOWDARY, J

July 05, 2017.
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